

1 HAROLD G. BECKS, State Bar No. 59126  
hbecks@beckslaw.com  
2 DOUGLAS L. DAY, State Bar No. 92581  
dougday@beckslaw.com  
3 HAROLD G. BECKS & ASSOCIATES  
3250 Wilshire Boulevard Suite 708  
4 Los Angeles, California 90010  
Telephone: (213) 385-9852  
5 Fax: (213) 385-1370

6 Attorneys for Defendants  
COUNTY OF LOS ANGELES; SHERIFF JIM MCDONNELL; COMMANDER  
7 PATRICK MAXWELL; CAPTAIN JACK EWELL; SERGEANT SEAN BURKE;  
DEPUTY ANTHONY GEISBAEUEER; DEPUTY JUAN RODRIGUEZ; DEPUTY  
8 EDSON SALAZAR; DEPUTY DONALD MCNAMARA; DEPUTY STEVEN  
PRATT; DEPUTY IAN STADE; DEPUTY DANIEL WELLE; AND DEPUTY  
9 JAMES WHEELER

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA**

13 DAWN SOARES, TIFFANY  
14 SOARES, ALISSA VARNEDOE,  
JAYDA MACCASKIE AS MOTHER  
15 AND NATURAL GUARDIAN FOR  
MINOR CHILDREN "J.V." AND  
16 "S.V.", CHILDREN OF DECEDENT,  
AND SUCCESSORS OF INTEREST,  
17 HEIRS.

18 Plaintiffs,

19 v.

20 COUNTY OF LOS ANGELES,  
SHERIFF JIM McDONNELL,  
21 CAPTAIN JACK EWELL,  
SERGEANT SEAN BURKE, DEPUTY  
22 ANTHONY GEISBAUER, DEPUTY  
JUAN RODRIGUEZ, DEPUTY  
23 EDSON SALAZAR, DEPUTY  
DONALD MCNAMARA, DEPUTY  
24 STEVEN PRATT, DEPUTY IAN  
STADE, DEPUTY DANIEL WELLE,  
25 DEPUTY WHEELER; and DOES 1 -  
10,

26 Defendants.  
27

**CASE NO.: 2:17-cv-00924 RGK-AS**

**Assigned to Hon. R. Gary Klausner**

**DEFENDANTS' MOTION IN  
LIMINE NO. 1 TO EXCLUDE  
EVIDENCE OF PRIOR CLAIMS,  
LAWSUITS OR INCIDENTS OF  
USE OF FORCE INVOLVING  
COMMANDER PATRICK  
MAXWELL; DECLARATION OF  
DOUGLAS L. DAY**

DATE: May 29, 2018  
TIME: 9:00 a.m.  
CTRM: 850, 8<sup>th</sup> Floor

**TO THIS HONORABLE COURT AND TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on May 29, 2018, at 9:00 a.m., or as soon thereafter as this matter may be heard, Defendants County of Los Angeles, et al, will and do hereby move the above-entitled Court, located at the United States Courthouse, 255 East Temple Street, Courtroom 850, for an Order in limine seeking to exclude any evidence of prior claims, lawsuits or use of force involving Commander Patrick Maxwell.

Defendants request that this Court instruct Plaintiff, their witnesses, and his counsel of record as follows:

“No party, witness, or attorney shall make any statements, arguments, references or insinuations to the jury or to potential jurors, or question any witness or offer any evidence, concerning any prior claims, lawsuits or incidents use of force involving Commander Patrick Maxwell.”

This Motion in limine is made on the grounds that: (1) evidence of prior claims, lawsuits or incidents of use of force is inadmissible to show character or action in conformity therewith; (2) extrinsic evidence of specific instances of conduct is inadmissible to attack credibility; (3) prior claims, lawsuits or incidents of use of force are not probative of truthfulness; and (4) prior claims, lawsuits or incidents of use of force against Commander Maxwell are irrelevant and prejudicial to this matter.

This Motion is based upon this Notice of Motion, the attached Memorandum of Points and Authorities, the accompanying Declaration of Douglas L. Day, the records and pleadings on file in this action, and upon such further argument or other evidence as may be presented at the time of the hearing.

**Conference of counsel prior to filing motion (Local Rule 7-3):** This Motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on April 6, 2018. This conference did not succeed in resolving the issues which are the

1 subject of this Motion.

2

3 Dated: April 13, 2018

HAROLD G. BECKS & ASSOCIATES

4

5

By: /s/ Douglas L. Day

6

HAROLD G. BECKS

7

DOUGLAS L. DAY

8

Attorneys for Defendants

9

COUNTY OF LOS ANGELES, *et al.*

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I. INTRODUCTION**

3           Defendants anticipate that Plaintiffs may attempt to admit at trial evidence of  
4 other claims, lawsuits or incidents of use of force that may have been filed or involved  
5 Commander Patrick Maxwell. However, evidence of prior claims, lawsuits or  
6 incidents of use of force is irrelevant to determining whether any conduct in this  
7 incident involving decedent Leroy Varnedoe was unlawful. It would be highly  
8 prejudicial to allow evidence of any other claims, lawsuits or other incidents involving  
9 use of force in which Commander Maxwell was involved because such matters may  
10 inappropriately influence the jury's determination of whether Commander Maxwell  
11 and the other defendants' actions towards decedent and the Plaintiffs in this instance  
12 were reasonable and lawful.

13           Accordingly, Defendants request this Court to preclude Plaintiffs from making  
14 any reference to any of Defendants prior claims, lawsuits or incidents involving use  
15 of force. Defendants urge this Court to disallow such evidence at trial as it is  
16 inappropriate character evidence, irrelevant and will be extremely prejudicial to  
17 defendants.

18   **II. EVIDENCE OF UNRELATED PRIOR CLAIMS, LAWSUITS OR USES**  
19       **OF FORCE BY COMMANDER MAXWELL ARE INADMISSIBLE TO**  
20       **SHOW CHARACTER OR ACTION IN CONFORMITY THEREWITH**

21           Federal Rules of Evidence, Rule 404(b) provides in pertinent part that  
22 "evidence of other crimes, wrongs, or acts is not admissible to prove the character of  
23 a person in order to show action in conformity therewith." Fed. R. Evid. 404(b). In  
24 order for another act to be admissible under Rule 404(b), the following test must be  
25 satisfied: "(1) there must be sufficient proof for the jury to find that the defendant  
26 committed the other act; (2) the other act must not be too remote in time; (3) the other  
27 act must be introduced to prove a material issue in the case; and (4) the other act must,

1 in some cases, be similar to the offense charged.” *Duran v. City of Maywood*, 221 F.  
2 3d 1127, 1132-33 (9<sup>th</sup> Cir. 2000). Even if all four conditions are met, the evidence  
3 may still be excluded under Federal Rules of Evidence Rule 403 if its prejudicial  
4 effect outweighs its probative value.

5 Here, Plaintiffs will attempt to show that because Commander Patrick  
6 Maxwell’s past conduct was the subject of prior claims, lawsuits or use of force  
7 incidents, it was improper, thus creating an inference that he acted in conformity with  
8 that character during the incident in question.

9 However, evidence of such other acts as this is not admissible to prove the  
10 character of Commander Maxwell pursuant to Rule 404(b). Plaintiffs cannot show  
11 that prior claims, lawsuits or use of force incidents prove a material issue in Plaintiffs’  
12 case, such as whether Commander Maxwell violated the constitutional rights of  
13 decedent or Plaintiffs.

14 **III. PLAINTIFFS MAY NOT INTRODUCE EVIDENCE OF PRIOR**  
15 **CLAIMS, LAWSUITS OR INCIDENTS OF USE OF FORCE TO**  
16 **ATTACK CREDIBILITY OF COMMANDER MAXWELL**

17 Federal Rules of Evidence, Rule 608(b) provides that “specific instances of the  
18 conduct of a witness, for the purpose of attacking or supporting the witness’ character  
19 for truthfulness, ... may not be proved by extrinsic evidence.” Fed. R. Evid. 608(b).  
20 Specific instances of the conduct of a witness “may, however, in the discretion of the  
21 court, if probative of truthfulness or untruthfulness, be inquired into on cross-  
22 examination of the witness (1) concerning the witness’ character for truthfulness or  
23 untruthfulness,...” *Id.*

24 Plaintiffs may attempt to present evidence of prior claims, lawsuits or incidents  
25 of use of force involving Commander Patrick Maxwell to show that since other  
26 persons filed claims, lawsuits or were involved in incidents with the use of force,  
27 Commander Maxwell was dishonest with respect to his conduct in this case.

1 However, any extrinsic evidence of this type is not admissible pursuant to Federal  
2 Rule of Evidence Rule 608(b) because the fact that Commander Maxwell may have  
3 been involved in other claims, lawsuits or incidents of use of force does not reflect in  
4 any way upon his truthfulness. Instead, it relates to whether his conduct in different,  
5 unrelated matters was justified.

6 Admission of such evidence would give Plaintiffs an opportunity to make  
7 improper suggestions regarding Commander Maxwell's alleged prior conduct which  
8 would be unfair and prejudicial. Accordingly, Defendants request this Court order  
9 Plaintiffs refrain from introducing extrinsic evidence relating to any prior claims,  
10 lawsuits or incidents of use of force involving Commander Patrick Maxwell.

11 **IV. EVIDENCE OF OTHER CLAIMS, LAWSUITS OR INCIDENTS OF**  
12 **USE OF FORCE OF COMMANDER MAXWELL IS IRRELEVANT**

13 Only relevant evidence is admissible at trial. Fed. R. Evid. 401, 402. Under  
14 the Federal Rules, evidence shall only be admissible if it has a tendency to make the  
15 existence of any fact that is of consequence to the determination of the action more of  
16 less probable. *Id.*

17 The evidence which is the subject of this Motion is not related to the facts of  
18 this case in any way. Any claims, lawsuits or other incidents involving the use of  
19 force involve unrelated parties and circumstances unique and distinct from those in  
20 this matter. No factual connection can be made between those other matters and the  
21 instance action. Nothing in any other claim, lawsuit or use of force incident would  
22 tend to show that Commander Maxwell violated the civil rights of decedent or  
23 Plaintiffs as alleged in the Complaint. Accordingly, such evidence is irrelevant and  
24 inadmissible.

25 ///

26 ///

27 ///

1 **V. ANY PROBATIVE VALUE OF CLAIMS, LAWSUITS OR INCIDENTS**  
2 **OF USE OF FORCE IS SUBSTANTIALLY OUTWEIGHED BY THE**  
3 **DANGER OF UNDUE PREJUDICE AND WASTE OF TIME**

4 The Federal Rules of Evidence, Rule 403, provides that evidence may be  
5 excluded if its probative value is substantially outweighed by the danger of undue  
6 prejudice, confusion of the issues, misleading the jury, or by consideration of waste  
7 of time. Fed. R. Evid. 403. Here, evidence of prior claims, lawsuits or incidents of  
8 use of force has little use other than an attempt to improperly show character in  
9 conformity therewith. “[C]haracter evidence is of slight probative value and may be  
10 very prejudicial. It tends to distract the trier of fact from the main question of what  
11 actually happened on the particular occasion. It subtly permits the trier of fact to  
12 reward the good man and to punish the bad man because of their respective characters  
13 despite what the evidence in the case shows actually happened. *Cohn v. Papke*, 655  
14 F.2d 191, 194 (9<sup>th</sup> Cir. 1981), *citing* Committee Notes to Rule 404 (quoting California  
15 Law Revision Commission). In this case, reference to prior, unrelated claims,  
16 lawsuits or incidents of use of force is designed to show character for unlawful  
17 conduct, leading the jury to view Commander Maxwell and the defendants as  
18 consistently bad actors and improperly infer liability in this particular instance. As a  
19 result, introducing such evidence would be severely prejudicial to defendants and  
20 should be excluded.

21 Further, admission of such evidence would lead to a full-blow trial within a  
22 trial which would confuse the issues and the jury and be a waste of this Court’s judicial  
23 resources and time. *See Duran, supra*, 211 F. 3d at 1133 (excluding evidence of  
24 subsequent shooting by defendant officer where slight probative value was  
25 substantially outweighed by danger of undue prejudice and waste of time from having  
26 to call multiple witnesses regarding act.)

27 In particular, jurors might become confused between the facts of the present  
28

1 case and that of a prior or subsequent lawsuit. Moreover, discussion of another claim,  
2 lawsuit or incident involving use of force would waste important time needed to  
3 concentrate on the facts of this case. It would also force defendants to divert time  
4 from discussion of this incident to explain the nature or merit of the other claim,  
5 lawsuit or use of force incident involving Commander Maxwell. Consequently, for  
6 the reasons stated, this evidence should be excluded at trial.

7 **VI. CONCLUSION**

8 For the reasons set forth herein, Defendants request that the Court grant Motion  
9 in limine No. 1 and enter an Order precluding Plaintiffs and their counsel from  
10 introducing any evidence relating to prior claims, lawsuits or other incidents of use of  
11 force involving Commander Patrick Maxwell.

12 Dated: April 13, 2018

HAROLD G. BECKS & ASSOCIATES

13  
14 By: /s/ Douglas L. Day  
15 HAROLD G. BECKS  
16 DOUGLAS L. DAY  
17 Attorneys for Defendants  
18 COUNTY OF LOS ANGELES, *et al.*  
19  
20  
21  
22  
23  
24  
25  
26  
27



**DECLARATION OF DOUGLAS L. DAY**

I, Douglas L. Day, declare:

1. I am an attorney at law duly licensed and entitled to practice in the State of California, and have been admitted to practice before this United District Court for the Central District of California since 1980, as well as before the Southern, Northern and Eastern Districts of California, the Ninth Circuit Court of Appeal, and the United States Supreme Court. I am an associate in the Law Offices of Harold G. Becks & Associates and am one of the attorneys with primary responsibility for the handling of this case on behalf of the Defendants herein. In that capacity, I am personally familiar with the facts set forth herein and if called as a witness in this case, I could and would competently testify hereto.

2. This Declaration is made in support of Defendants' motion *in limine* No. 1.

3. On April 6, 2018, this office sent a letter to Jacob Menicucci, counsel of record for plaintiffs, advising Mr. Menicucci that Defendants wished to exclude all reference to Commander Maxwell's prior uses of force and requesting a conference to discuss whether plaintiffs would stipulate to the inadmissibility of this material

4. On April 6, 2018, I met and conferred with Mr. Menicucci and discussed whether plaintiffs would stipulate to the inadmissibility of evidence or comments regarding Commander Maxwell's prior uses of force. Mr. Menicucci stated that plaintiffs would not stipulate to the exclusion of this evidence.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 13, 2018 at Los Angeles, California.

/s/ Douglas L. Day  
Douglas L. Day

**PROOF OF SERVICE**

*Soares v. County of Los Angeles, et al.*  
*USDC Case No.: 2:17-cv-00924*

I am employed in the City of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 3250 Wilshire Boulevard, Suite 708, Los Angeles, California 90010.

On **April 13, 2018**, I served the foregoing document described as:  
**DEFENDANTS' MOTION IN LIMINE NO. 1 TO EXCLUDE EVIDENCE OF PRIOR CLAIMS, LAWSUITS OR INCIDENTS OF USE OF FORCE INVOLVING COMMANDER PATRICK MAXWELL; DECLARATION OF DOUGLAS L. DAY**, to all interested parties in this action by a true and accurate copy thereof, enclosed in sealed envelopes, addressed as follows:

Tristan G. Pelayes, Esq.  
Armanda J. Parker, Esq.  
WAGNER & PELAYES, LLP  
1325 Spruce Street, Suite 200  
Riverside, CA 92507  
Tel: (951) 686-4800  
Fax: (951) 686-4081

*Attorney for Plaintiffs*

☒ **BY ELECTRONIC E-FILEING:** (IN COMPLIANCE WITH L.R.5-3-2.1) on **April 13, 2018**, at my place of business.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **April 13, 2018**, at Los Angeles, California.

\_\_\_\_\_  
/s/ Sara Justice  
Sara Justice